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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,444	03/17/2004	Eugene D. Perry	12748-74659	3530
23643	7590	10/19/2005	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			HOWELL, DANIEL W	
			ART UNIT	PAPER NUMBER

3722

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,444

Applicant(s)

PERRY, EUGENE D.

Examiner

Daniel W. Howell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the various actuators of claims 10, 13, and 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. No claim 17 was submitted, so claim 18 has been renumbered as claim 17.

3. Claims 1-10, 16, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. On line 2 of claim 1, it is not clear what the scope of "such as a ceiling" is. It is suggested that this simply be deleted. Claims 16 and 17 are apparatus claims,

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but they depend from method claim 15. The claims should be slightly amended to place them in appropriate method claim format.

4. On line 2 of claim 1, the spelling of “apparatus” should be corrected.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 8, 9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Geibel (4,736,804). Base 11 has a vertically extending column 15 (collectively forming a tool support), and tool actuator/foot lever 60 causes strut 24 to move vertically in order to drill a hole in a ceiling with drill 14. Regarding claim 8, brackets 26 support the tool actuator strut 24 for movement relative to the column 15.

7. Claims 1-3, 6, 8, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Palik (2,720,125). Base 11 has a central tube 10, and tube 15 which supports drill 25 slides concentrically within tube 10. A first bracket 12 is secured to tube 10, and a second bracket 40 is connected to tube 15 by pawl 48, such that movement of hand lever 55 causes the drill to make a hole in the ceiling.

8. Claims 1-3, 6, 9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glenn (2,571,862). Base 12 has a tube 14, and drill 19 is secured to a tube 16 which slides in tube 14. Foot pedal 38 is used to feed the drill into the ceiling.

9. Claims 1-3, 6-9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Baublitz (2,879,677). Base 12 has an upstanding square steel tube 10. Parallel tube 18 supports

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a drill D, and foot lever 34 causes the tool to move vertically. Brackets 26 connect the tubes 10 and 18.

10. Claims 1-3, 6, and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lupear (3,387,509). Figure 2 of Lupear shows a base 14 with a column 16, a drill 12, and a hand lever 36 to move the tool upward. As seen from figure 5, scribe lines intersecting at 54 have been made to aid in locating the base, such that the holes may be made in proper locations in a ceiling structure.

11. Claims 1-4, 6-8, 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by German 10047353. See figure 1. Figure 2 shows a pattern on the floor, and figure 8 shows a laser 40 for aligning the drill 2 in the proper place.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Palik, Baublitz, Glenn, or Geibel in view of Waber (3,417,949). None of the base references have caster wheels. Waber shows a similar portable drill support having caster wheels 4 to aid in transporting the support. In view of this teaching of Waber, it is considered to have been obvious to equip the base references with caster wheels in order to make transportation of the devices much easier.

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14. Claims 1-8 and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (3,412,813) in view of Lupear (3,387,509). Johnson shows a base 10 having an upstanding column 32, a drill M, and a rack-pinion drive for moving the carriage 70 along column 32. Post 49 may be placed on top of head portion 46 in order to brace the drill stand against the ceiling. As discussed at column 3, lines 65+, the base has two legs 14 and one leg 15. It is considered to have been obvious to have provided an additional fourth leg in order to provide a more stable support which is less likely to wobble or flex. Wheels 16 provide easy transportation of the device. As seen in figure 4, the column 32 is rectangular in cross section. It is considered to have been obvious to have made the column of a square shape, as a square is a specific type of rectangle. It is well known that such drill stands may be oriented in order to drill on different surfaces or in different orientations. For instance, figure 6 of Johnson shows that the device may be used in a horizontal manner. Lupear shows in figures 1 and 2 that it is quite common to change the orientation of the drill such that it can drill either upwards or downwards. In view of this teaching of Lupear, it is considered to have been obvious to reorient the drill of Johnson by flipping the motor 180 degrees in order to increase the number of ways that the drill support can be used to drill, i.e. in order to drill in a ceiling. Figure 5 of Lupear shows that intersecting scribe lines have been made to indicate where the base 14 should be positioned in order to drill the hole at the desired location. In view of this teaching of Lupear, it is considered to have been obvious to have placed scribe lines on the floor in desired locations in order for the base of Johnson to be properly located in order to drill holes in the desired locations on the ceiling.

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15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Lupear as applied to claim 1 above, and further in view of Henkel (3,257,909). It can be difficult to manually feed the tool of Johnson into hard surfaces, such as concrete. Henkel shows that it is conventional to use the motor which rotates the tool to feed the tool axially. See column 1, lines 11-18. Rotary hydraulic motor 16 rotates a worm 74. This rotary motion is transmitted through members 76, 80, 92, 94, and feeding pinion 104 to move the tool along rack 13. It is considered to have used the motor of Johnson to have provided axial movement of the tool as shown by Henkel such that the tool need not be fed manually into a hard workpiece.

16. It is noted that numerous other references cited by the examiner could have been used to make rejections under 35 USC 102(b). Applicant is strongly urged to review all of the cited art when making amendments.

17. Any inquiry concerning the content of this communication from the examiner should be directed to Daniel Howell, whose telephone number is 571-272-4478. The examiner's office hours are typically about 10 am until 6:30 pm, Monday through Friday. The examiner's supervisor, Boyer Ashley, may be reached at 571-272-4502.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office actions directly into the Group at FAX number to 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify Examiner Daniel Howell of Art Unit 3722 at the top of your cover sheet.



Daniel W. Howell  
Primary Examiner  
Art Unit 3722